

**MANDELBAUM, SALSBURG,  
GOLD, LAZRIS & DISCENZA, P.C.**

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Attorneys for NICA, Inc.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

SILVEX DESIGNS, INC.,

Plaintiff,  
-against-

FAST FLEET SYSTEMS, INC.,  
QUEBECOR WORLD LOGISTICS, INC.  
d/b/a Q.W. EXPRESS, STATION  
OPERATOR SYSTEMS, INC., INTEGRITY  
TRANSPORT, INC., EDWARD EGAN,  
individually, NICA, INC., JIRARI CORP., and  
HICHAM JIRARI, individually,

Defendants.

Civil Action No. 07-cv-3740 (DC)(DFE)

**THIRD-PARTY DEFENDANT NICA,  
INC.'S ANSWER TO THE THIRD-  
PARTY COMPLAINT OF FAST  
FLEET SYSTEMS, INC.,  
AFFIRMATIVE DEFENSES AND  
CROSS-CLAIMS**

FAST FLEET SYSTEMS, INC.,

Third-Party Plaintiff,  
-against-

ONE BEACON INSURANCE COMPANY,  
STATION OPERATOR SYSTEMS, INC.,  
INTEGRITY TRANSPORT, INC., EDWARD  
EGAN, individually, NICA, INC., JIRARI  
CORP., and HICHAM JIRARI, individually,

Third-Party Defendants.

QUEBECOR WORLD LOGISTICS, INC.,

Third-Party Plaintiff,

-against-

STATION OPERATOR SYSTEMS, INC.,  
INTEGRITY TRANSPORT, INC., EDWARD  
EGAN, individually, HICHAM JIRARI,  
individually, JIRARI CORP., and NICA, INC.,

Third-Party Defendants.

Third-Party Defendant, NICA, Inc. (“NICA”), by and through its attorneys, Mandelbaum, Salsburg, Gold, Lazris, & Discenza, P.C., answers the Third-Party Complaint of Fast Fleet Systems, Inc. as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Answering paragraph 1 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
2. Answering paragraph 2 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
3. Answering paragraph 3 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
4. Answering paragraph 4 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.
5. Answering paragraph 5 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

6. Answering paragraph 6 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

7. Answering paragraph 7 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

8. Answering paragraph 8 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

9. Answering paragraph 9 of the Third Party Complaint, NICA admits that it is a corporation organized and existing by virtue of the laws of Massachusetts in the United States, but denies the remaining facts alleged. By way of further answer, NICA avers that it has an office and place of business located at 703 Granite Street, Suite 300, Braintree, Massachusetts.

10. Answering paragraph 10 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

**COUNT ONE**

11. Answering paragraph 11 of the Third Party Complaint, NICA repeats each answer in paragraphs 1 through 10 as if set forth herein at length.

12. Answering paragraph 12 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

13. Answering paragraph 13 of the Third Party Complaint, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged.

14. Answering paragraph 14 of the Third Party Complaint, NICA denies the facts alleged.

15. Answering paragraph 15 of the Third Party Complaint, NICA denies the facts alleged.

16. Answering paragraph 16 of the Third Party Complaint, NICA denies the facts alleged.

17. Answering paragraph 17 of the Third Party Complaint, NICA asserts that the allegations require a legal conclusion to which no response is required. To the extent a response is necessary, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged regarding the other parties and denies all facts relating to NICA.

18. Answering paragraph 18 of the Third Party Complaint, NICA asserts that the allegations require a legal conclusion to which no response is required. To the extent a response is necessary, NICA lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged regarding the other parties and denies all facts relating to NICA.

### **AFFIRMATIVE DEFENSES**

NICA hereby asserts the following Affirmative Defenses in this case:

#### **FIRST AFFIRMATIVE DEFENSE**

The Third Party Complaint fails to state a claim, in whole or in part, upon which relief can be granted against NICA.

#### **SECOND AFFIRMATIVE DEFENSE**

Personal jurisdiction has not been properly obtained over NICA and NICA reserves its right to contest the alleged personal jurisdiction.

#### **THIRD AFFIRMATIVE DEFENSE**

The Third Party Complaint fails to aver facts necessary to establish that NICA breached a duty that resulted in Third Party Plaintiff sustaining damages.

**FOURTH AFFIRMATIVE DEFENSE**

Any and all damages sustained by Third Party Plaintiff, if any, were proximately caused by, and were the sole responsibility of, third parties over whom NICA exercised no control or authority.

**FIFTH AFFIRMATIVE DEFENSE**

Third Party Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, acquiescence, laches and/or unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

There is a defect or misjoinder of parties involved in this matter.

**SEVENTH AFFIRMATIVE DEFENSE**

The Third Party Complaint is uncertain and ambiguous.

**EIGHTH AFFIRMATIVE DEFENSE**

Third Party Plaintiff's claims are barred, in whole or part, or its recovery of damages should be reduced, by its failure to take reasonable steps to avoid or minimize its alleged damages.

**NINTH AFFIRMATIVE DEFENSE**

NICA has engaged the law office of Mandelbaum, Salsburg, Gold, Lazris & Discenza, P.C. to represent it in its defense of Third Party Plaintiff's frivolous, unfounded and unreasonable Third Party Complaint, and NICA is thereby entitled to an award of reasonable attorney fees upon judgment in its favor.

**TENTH AFFIRMATIVE DEFENSE**

The proximate cause of Third Party Plaintiff's alleged damages, if any, was Third Party Plaintiff's own conduct and not that of NICA.

**ELEVENTH AFFIRMATIVE DEFENSE**

NICA intends to rely upon such other and further defenses as may become available during discovery in this action and reserves its right to amend this Answer to asset any such additional affirmative defenses.

**TWELFTH AFFIRMATIVE DEFENSE**

NICA complied with all of its contractual and other legal requirements governing its actions or omissions in this matter.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The claims against NICA are barred because NICA is not a carrier of goods subject to the Carmack Amendment.

**WHEREFORE**, NICA prays that Third-Party Plaintiff take nothing by way of its Third Party Complaint, and the Court dismiss the entire action and all claims by Third-Party Plaintiff against NICA with prejudice, and enter judgment for NICA against Third-Party Plaintiff for NICA's reasonably incurred attorney's fees and costs, and all other relief it deems just and proper.

**CROSSCLAIM FOR INDEMNIFICATION**

Without admitting liability herein by NICA, if there is any liability on the part of NICA, then it is asserted that liability was passive and secondary in nature in comparison to the liability

of any named or to be named third party defendants, if any damages are sustained. Therefore, demand is made for a judgment of common law indemnification against all other third party defendants.

**WHEREFORE**, NICA demands judgment against all other third party defendants for indemnification for any judgment that the Third Party Plaintiff may obtain against NICA.

**CROSSCLAIM FOR CONTRIBUTION**

Without admitting liability herein by NICA, if there is any liability on the part of any other third party defendant named or to be named in this litigation, then it is asserted that their liability was the major contributing factor and they are jointly liable with NICA. Therefore, demand is made for judgment of contribution for all, or any part, of any sum adjudged against NICA.

**WHEREFORE**, NICA demands judgment against all other third party defendants for contribution for any judgment that the Third Party Plaintiff may obtain against NICA.

**DESIGNATION OF TRIAL COUNSEL**

William H. Healey, Esq. is hereby designated as trial counsel for NICA, Inc.

**MANDELBAUM, SALSBURG,  
GOLD, LAZRIS & DISCENZA, P.C.**  
Attorneys for NICA, Inc.

By: /s/ Lance N. Olitt  
LANCE N. OLITT

DATED: December 20, 2007